



# Publication 130

December 2007

## *Who is Required to Withhold Illinois Income Tax*

The information in this publication is current as of the date of the publication. Please visit our web site at **tax.illinois.gov** to verify you have the most current revision.

This publication is written in the plain English style so the tax information is easier to understand. As a result, we do not directly quote Illinois statutes and the Illinois Administrative Code. The contents of this publication are informational only and do not take the place of statutes, rules, and court decisions. For many topics covered in this publication, we have provided a reference to the applicable section or part of the Illinois Administrative Code for further clarification or more detail. All of the sections and parts referenced can be found in Title 86 of the Code.

### **About this publication**

Publication 130, *Who is Required to Withhold Illinois Income Tax*, is about income tax withholding requirements. The objectives of this publication are to identify

- who is an employer;
- who is an employee;
- when withholding must occur;
- other withholding requirements for payments of lottery or gambling winnings;
- what forms you must give to employees and lottery or gambling winners; and
- what records you should keep.

**Related publications:** This publication, along with Publication 131, *Withholding Income Tax Filing and Payment Requirements*, replaced Booklet IL-700, *Illinois Payroll/Withholding Income Tax Returns and Instructions*. See Booklet IL-700-T, *Illinois Withholding Income Tax Tables*, to calculate withholding.

### **Taxpayer Bill of Rights**

You have the right to call the Department of Revenue for help in resolving tax problems.

You have the right to privacy and confidentiality under most tax laws.

You have the right to respond, within specified time periods, to department notices by asking questions, paying the amount due, or providing proof to refute the department's findings.

You have the right to appeal department decisions, in many instances, within specified time periods, by asking for department review or by taking the issue to court.

If you have overpaid your taxes, you have the right, within specified time periods, to a credit (or, in some cases, a refund) of that overpayment.

For more information about these rights and other department procedures, you may write us at the following address:

Problems Resolution Office  
Illinois Department of Revenue  
PO Box 19014  
Springfield, IL 62794-9014

**Get forms and other information faster and easier at [tax.illinois.gov](http://tax.illinois.gov)**

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# General Information

## Who is required to withhold Illinois Income Tax?

Generally, you must withhold Illinois Income Tax if you are required to withhold (or have a voluntary agreement to withhold) federal income tax from payments you make for

- employee compensation (i.e., wages and salaries) paid in Illinois, or
- gambling or lottery winnings in Illinois paid to an Illinois resident

You must register with us to withhold Illinois Income Tax.

As a withholding agent, you are liable for the taxes that you are required to withhold. Because we are required to collect taxes (and issue assessments when these taxes are not paid), Illinois law states that the amounts required to be withheld and paid to us (and any penalties and interest) are considered to be a tax on **you**. As the withholding agent you must pay the tax even if you failed to withhold the tax from your employee.

Even if you meet these requirements, there are some situations that do not require you to withhold Illinois Income Tax. See **“When am I not required to withhold Illinois Income Tax?”** for more information.

**Note** We do not require a separate agreement for payments covered by a federal voluntary withholding agreement. If requested by a payee, you can enter into a voluntary agreement and withhold Illinois Income Tax on individual retirement accounts (IRAs) or pensions.

## Who is an employer?

You are an employer if you are any of the following:

- a person or organization who has an office or transacts business in Illinois for whom a worker performs a service as an employee and you are the person who is liable to withhold and pay federal income taxes to the Internal Revenue Service (IRS).
- a person or organization who has an office or transacts business in Illinois and who has control of the payment of wages for employee services, if the employer does not have control of the payment of wages.
- a payer who has an office or transacts business in Illinois and who makes payments from which federal income taxes are withheld (e.g., gambling or lottery winnings).

See IRS Publication 15 Circular E, Employer’s Tax Guide, for more information.

## Who is an employee?

An employee is either

- a person who performs services subject to the legal control and direction of an employer, or

- an Illinois resident who receives payments on which federal income tax is withheld by the employer.

See IRS Publication 15 Circular E, Employer’s Tax Guide, for more information.

## How do I register to withhold Illinois Income Tax?

If you withhold income tax for your Illinois employees, you must register with the Illinois Department of Revenue.

To register your business and receive your account number (i.e., your “tax” number or IBT no.), you have these options:

- register electronically with on-line Business Registration application (1-2 days) at [tax.illinois.gov](http://tax.illinois.gov)
- complete and mail Form REG-1, Illinois Business Registration Application (6-8 weeks)
- visit one of our regional offices (See Page 10)

**Option for employers of household workers:** If you only employ household employees (i.e., you control how the work is performed by a person who does domestic work around your home — for example, a babysitter, caretaker, cleaning person, driver, health aide, housekeeper, nanny, private nurse, or yard worker), you may choose to file and pay your unemployment insurance contributions and withholding income tax once a year.

You must register as a household employer with the Illinois Department of Employment Security (IDES) before April 15th, fill out the election form, and select the annual combined reporting option. For more information about household employer registration, unemployment insurance reporting, and for related forms, visit [household.illinois.gov](http://household.illinois.gov) or call the IDES employer hotline at **1 800 247-4984**.

For more information about withholding income tax for household employees, see Publication 121, Withholding Income Tax for Household Employees.

## What happens after I register?

We will send you a personalized withholding “coupon” booklet. Use the forms in the booklet to report and pay your taxes or file and pay electronically. See Publication 131, Withholding Income Tax Filing and Payment Requirements.

## What if I need more forms than my coupon booklet has in it?

To order more forms, visit our web site at [tax.illinois.gov](http://tax.illinois.gov) or call our Central Registration Division at **217 785-3707**.

### ***What should I do if I move or change my business name?***

If you move your business location or change your business name without changing owners, or you want us to mail all withholding tax information to a special address (e.g., a payroll provider), you must complete **Form REG-16**, Illinois Business Name and Address Change Form, located in your personalized withholding coupon booklet. Send this form to us and use the mailing label provided in your coupon booklet. **Continue to use the forms provided in your personalized coupon booklet.**

### ***What should I do if I sell or transfer ownership of my business?***

If you sell or transfer your business, you must file **CBS-1**, Notice of Sale or Purchase of Business Assets. Also, you **must** send us a final report on Form IL-941, Illinois Quarterly Withholding Income Tax Return.

# Withholding Illinois Income Tax for My Employees

## When must I withhold Illinois Income Tax from my employee's compensation?

You must withhold Illinois Income Tax when you withhold federal income tax from compensation you paid in Illinois. Compensation is paid in Illinois when the employee's services are "localized" in Illinois. This statement applies to all individuals except qualifying residents of Iowa, Kentucky, Michigan, and Wisconsin.

## When is compensation paid in Illinois?

If any of the following localization tests are met, compensation is paid in Illinois.

- The employee's service is localized in Illinois because all of the service is performed in Illinois.
- Some of the employee's services are performed outside Illinois, but the services outside Illinois are **incidental** to the services performed inside Illinois. Incidental services are those that support the employee's primary service, are temporary or transitory, or are isolated transactions.
- The employee's service is **not** localized in any state under either of the rules above, but
  - some of the service is performed in Illinois **and**
  - either the base of operations (*i.e.*, the place from which the employee works) is in Illinois, or, if there is no base of operations, the place from which the service is directed or controlled is in Illinois.
- The employee's service is **not** localized in any state under any of the rules above, but
  - some of the service is performed in Illinois,
  - the base of operations or the place from which the service is directed or controlled is **not** in any state in which some part of the service is performed, **and**
  - the employee is an Illinois resident.
- For compensation for services performed by a nonresident as a member of a professional athletic team, the amount that is paid in Illinois is the total compensation for services performed for the team during the year, multiplied by a fraction equal to the number of duty days spent within Illinois by the total number of duty days spent performing services for the team. See Section 304(a)(2)(B)(iv) of the Illinois Income Tax Act for more guidance.

## Limited exceptions to localization tests above

There are three limited exceptions when you are **not** required to withhold Illinois Income Tax if a localization test described above is met. These exceptions are described as follows.

- **The employee works for an employer under the jurisdiction of the Surface Transportation Board (STB) and performs regularly assigned duties in more than one state.** Although a localization test may be met, do **not** withhold Illinois Income Tax unless the employee is an Illinois resident.

- **The employee works on an aircraft for an air carrier and performs regularly assigned duties in more than one state.** Although a localization test may be met, do **not** withhold Illinois Income Tax unless the employee is an Illinois resident, or, if the employee is not an Illinois resident, the employee earns more than 50 percent of the compensation in Illinois (Illinois flight miles versus all flight miles). Illinois flight miles do not include miles flown over Illinois without taking off or landing.
- **The employee works on a vessel and performs regularly assigned duties in more than one state.** Although a localization test may be met, do **not** withhold Illinois Income Tax unless the employee is an Illinois resident.

## Examples of compensation paid in Illinois

- 1 Your company, headquartered in Georgia, employs an Indiana resident to make sales for your company. You control your employee's services, all of which are performed in Illinois, from your Georgia office. Compensation is paid in Illinois because all of your employee's services are performed in Illinois.
- 2 Your company, headquartered in Maryland, employs a Missouri resident to make routine service calls. The office from which the employee works and receives instruction (*i.e.*, the base of operations) is in Illinois. About 95 percent of your employee's customers are in Missouri and 5 percent are in Illinois. Compensation is paid in Illinois because the base of operations is in Illinois and significant services are performed in both states.

**Note** "Significant" does not equal a percentage. In this example, although only 5 percent of the total customers are in Illinois, the service performed in Illinois is separate from, and therefore, not incidental to, the service performed in Missouri.

- 3 Your company, headquartered in Ohio, employs an Illinois resident. There is no base of operations. The employee is controlled from your Ohio headquarters. Because services are performed in Illinois, Iowa, and Indiana, the services are not localized in only one state. Compensation is paid in Illinois because your employee is an Illinois resident, some of the service is performed in Illinois, and no service is performed in Ohio.
- 4 Your airline company employs a Missouri resident to fly to various destinations in the United States. Your employee reports to and flies out of a terminal in Illinois. According to your records, 58 percent of your employee's compensation (flight time in Illinois versus flight time to other destinations) is earned in Illinois. Therefore, you withhold Illinois Income Tax because more than 50 percent of your employee's compensation was earned in Illinois. Illinois flight miles do not include miles flown over Illinois without taking off or landing.

## When am I not required to withhold Illinois Income Tax?

You are **not** required to withhold Illinois Income Tax from

- compensation paid to residents of **Iowa, Kentucky, Michigan, and Wisconsin** (due to reciprocal agreements with each of these states);
- qualifying payments made for personal service contracts or prizes awarded from contests conducted in Illinois (Sections 1405.2 and 1405.3 of the Illinois Income Tax Act (IITA));
- compensation that is subject to withholding by another state because the localization tests described in this section apply as if they were in effect in the other state (compensation is not paid in Illinois);
- compensation that will not be included in the recipient's base income (e.g., annuity payments received from qualified employee benefit plans);
- payments subject to withholding under IRC, Sections 3405 or 3406;
- compensation paid to an employee whose compensation is exempt from federal withholding requirements (e.g., "wages" paid to certain types of household employees and ministers or members of a religious order);
- compensation paid by an employer under the jurisdiction of the Surface Transportation Board (STB), rail and motor carriers, to a nonresident employee who performs regularly assigned duties in more than one state, including Illinois;
- nonresident employees who work on aircraft for an air carrier, perform regularly assigned duties in more than one state, and do not earn more than 50 percent of the compensation in Illinois (Illinois flight miles versus all flight miles). Illinois flight miles do not include miles flown over Illinois without taking off or landing.
- compensation paid to a master or seaman on a vessel in the foreign, coastwise, intercoastal, interstate, or noncontiguous trade, or an individual employed on a fishing vessel or any fish processing vessel. (Illinois will tax income earned by Illinois residents, however.)

### Examples when withholding is not required

- 1 Your company, headquartered in Missouri, hires an Illinois resident to install computer networks for your Missouri-based clients. Occasionally, your employee travels to your clients' branch offices in Illinois to complete network installation. Compensation is not paid in Illinois because your employee's services are localized in Missouri and the services performed in Illinois are incidental to the services performed in Missouri. Therefore, you do not withhold Illinois Income Tax. (See the following note.)
- 2 Your company's main office is in Indiana. You employ an Illinois resident to honor copy machine routine maintenance contracts. Your employee works out of the main office and has clients in both Illinois and Indiana. You are not required to withhold Illinois Income Tax because your employee's base of operations is in Indiana and some of the service is performed in Indiana. (See the following note.)

**Note** Although in these two examples you are not required to withhold Illinois Income Tax, your employees' income **will** be taxed by Illinois because they are Illinois residents. Therefore, your employee will file returns in both states. We will give your employee a credit for taxes paid to the other state. If the amount of tax paid to the other state does not cover the Illinois tax liability, your employee may need to make estimated income tax payments to Illinois.

## Am I required to withhold income tax for another state if my employee is not an Illinois resident?

If your employee is "paid in Illinois" and is a resident of Iowa, Kentucky, Michigan, or Wisconsin, you may (upon request from the employee), but are not required by Illinois law, to withhold income tax for the other state.

If your employee is a resident of a state with whom Illinois does not have a reciprocal agreement, you must withhold Illinois Income Tax on all income that is paid in Illinois. You may be required to withhold tax for another state in which the employee works or resides. You should contact those states to determine if you are required to register as a withholding agent.

## What forms must my employee complete?

### Form IL-W-4

Your employee must complete **Form IL-W-4**, Employee's Illinois Withholding Allowance Certificate. This is your record of the number of allowances that your employee is entitled to claim and would only be disregarded for the following circumstances:

- An employee claims total exemption from Illinois income tax withholding, but has not filed a federal Form W-4, U.S. Employee's Withholding Allowance Certificate claiming total exemption.
- The IRS has instructed you to disregard the employee's federal Form W-4.
- You submitted the employee's Form IL-W-4 to us for review, and we instructed you to disregard the form. Form IL-W-4 is submitted for review if 15 or more exemptions are claimed on the Form IL-W-4 without claiming at least the same number of exemptions on the federal Form W-4, and the federal Form W-4 is not being reviewed by the IRS.

If a completed Form IL-W-4 is not filed, or you are required to disregard the Form IL-W-4, you must withhold Illinois Income Tax without allowing any exemptions.

**Note** Most retirement income is exempt from Illinois Income Tax and no withholding is required, even if federal income tax is withheld. However, senior citizens may wish to enter into voluntary withholding agreements to avoid having to pay estimated taxes on their taxable income. Senior citizens who enter into such voluntary withholding agreements must also complete Form IL-W-4.

If an employee claimed exemption from withholding on federal Form W-4, you still may be required to withhold Illinois Income Tax.

Before **December 1** of each year, have your employee review his or her Form IL-W-4. If your employee's Illinois withholding allowances change, the employee must complete a new Form IL-W-4.

### Example:

Sam is single, does not have any dependents, and cannot be claimed on another person's tax return. He works for you part-time. Sam expects to earn \$4,000 this year.

Last year Sam earned \$3,000, did not have a federal tax liability, and received a total refund of the federal income tax that was withheld from his pay. Sam does not expect to owe any federal income tax this year. Therefore, he claims exemption from withholding on his federal Form W-4 for this year.

Although Sam may not owe federal income tax, he will owe Illinois Income Tax because he is entitled to only one withholding allowance. The exemption for this allowance is less than his total pay. Therefore, you must withhold Illinois Income Tax from Sam's pay.

### Form IL-W-5

**Form IL-W-5**, Certificate of Residence in Illinois, is completed by an Illinois resident (not your employee) with whom you have a written contract who

- is paid for performing personal services (e.g., artistic or musical performances, or professional consulting services) and the income earned is taxable under Section 1405.2 of the IITA, or
- receives payment for prizes and awards from a contest conducted entirely in Illinois (e.g., game shows, amateur talent contests, dog or horse shows) and the income earned is taxable under Section 1405.3 of the IITA.

You are not required to provide annual information reports of the amounts you pay in either of these situations. You must, however, keep this information in your records and provide it to us if we request.

**Note** Instead of completing Form IL-W-5, the recipient may file a certificate of in-state residence on any invoice, billing statement, or contest application submitted to the withholding agent.

### Form IL-W-5-NR

Illinois has reciprocal agreements with Iowa, Kentucky, Michigan, and Wisconsin. To be exempt from Illinois Income Tax withholding requirements, residents of these states must complete **Form IL-W-5-NR**, Employee's Statement of Nonresidence in Illinois. If your employee does not complete this form, you **must** withhold Illinois Income Tax. If your employee moves out of the state of residence designated on the original Form IL-W-5-NR, the employee must notify you of the change within 10 days and file a new Form IL-W-5-NR, if applicable.

## What forms must I give my employee?

Before **February 1** of each year, you must give your employee three copies of federal **Form W-2**, Wage and Tax Statement, or, if applicable, any version of **Form 1099** (e.g., Form 1099-MISC, Form 1099-INT, Form 1099-R). **Do not send these forms to us.** Instead, keep them in your records for three years and send them to us if we request. See our Publication 110, IL-W-2 Requirements, for more information.

If your employee permanently discontinues employment before the close of the calendar year or you terminate a federal voluntary withholding agreement, you must give the employee (or other person receiving payments subject to withholding) a completed federal Form W-2 within 30 days of the last payment on which withholding was required.

**Note** You must keep undeliverable W-2 and all 1099 forms for at least three years after the date you are required to give the form to the employee.

# Withholding Tax for Lottery or Gambling Winnings

## When must I withhold Illinois Income Tax from lottery winnings?

You must withhold Illinois Income Tax each time you make a single payment of Illinois lottery winnings over \$1,000. It does not matter that several individuals may jointly hold the winning ticket and each person's "share" is less than \$1,000. You must withhold Illinois Income Tax for both residents and nonresidents.

## When must I withhold Illinois Income Tax from gambling winnings?

You must withhold Illinois Income Tax from gambling winnings you pay Illinois residents any time the winnings are subject to federal income tax withholding requirements. You are not required to withhold Illinois Income Tax from nonresidents.

In general, winnings that are currently subject to federal income tax withholding include proceeds of \$5,000 or more in a single payment from

- wagering transactions (if these winnings are at least 300 times greater than the amount of the wager);
- proceeds that are 300 times greater than an amount wagered in a sweepstakes, wagering pool, lottery (other than a state-conducted lottery), or wagering transaction in a pari-mutuel pool with respect to horse races, dog races, or jai alai.

See 26 USCA 3402(q) of the Internal Revenue Code and the IRS' instructions for federal Forms 5754 and W-2G for more information.

**Note** Bingo, keno, and slot machine winnings are **not** subject to federal withholding requirements. However, winners will be taxed on these types of gambling winnings.

## What forms must a winner complete?

Each time you pay lottery or gambling winnings over \$1,000 in a single payment, the winner must complete **Form IL-5754**, Statement by Person Receiving Gambling Winnings. This form helps you identify which winners are Illinois residents. Keep this form in your records to show who received winnings and to whom the winnings are taxable. You will use this information when you prepare federal Form W-2G.

Illinois residents must complete **Form IL-W-4-G**, Gambling Withholding Exemption Certificate, to claim exemption from withholding of lottery winnings over \$1,000 or gambling winnings that are subject to federal income tax withholding requirements. The winner must give you this form before you pay the winnings. If the winner does not give you this form, you must withhold the full rate of tax from the payment (*i.e.*, do not allow any exemptions).

## What forms must I give each recipient?

By **February 1** of each year, you must give each recipient two copies of federal **Form W-2G**. **Do not send this form to us.**

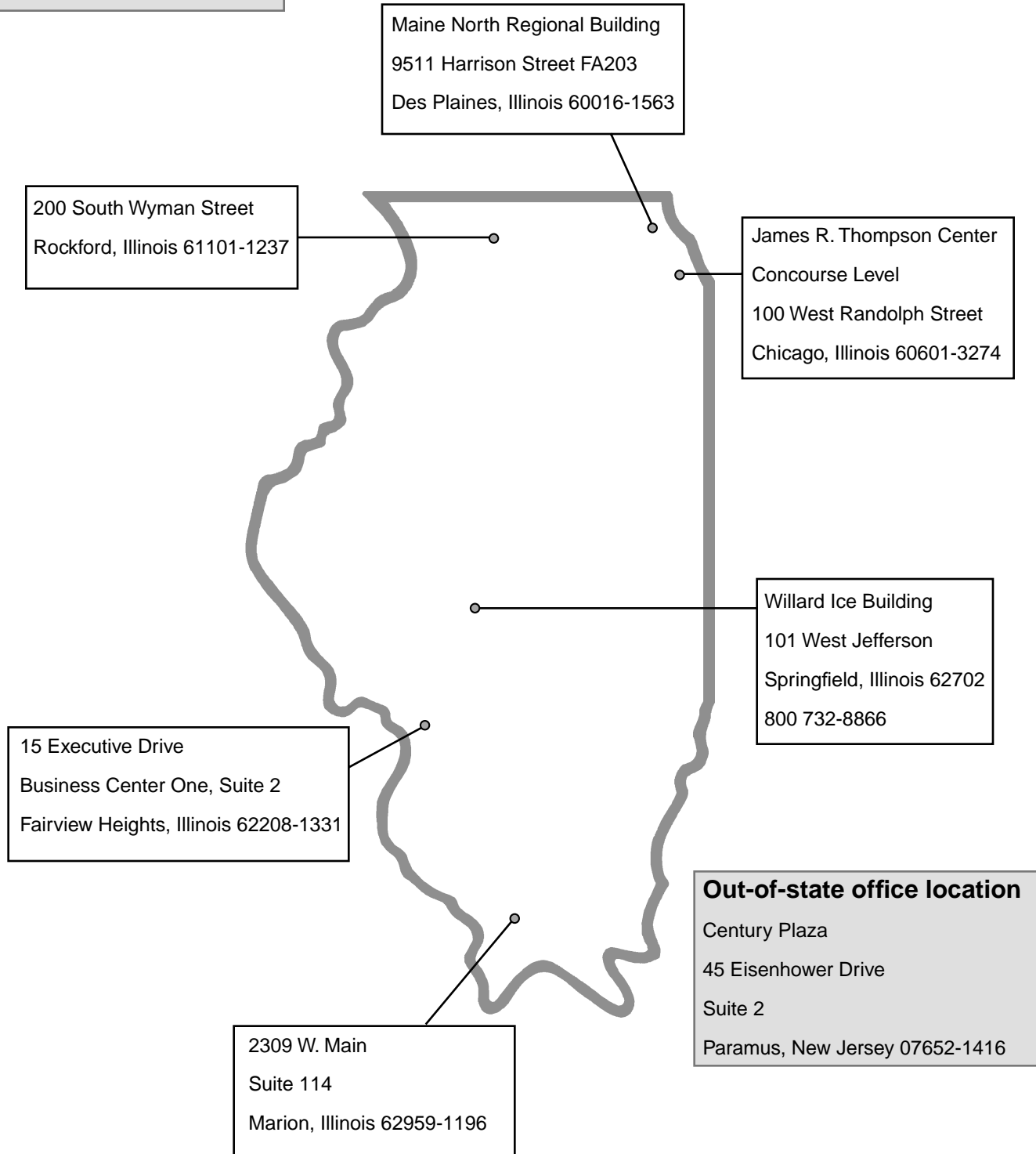
**Note** You must keep an undeliverable Form W-2G for at least three years after the date you are required to give the form to the recipient.



# Income Tax Forms for Employees and Lottery or Gambling Winners

Forms completed by employees and lottery or gambling winners		
If	complete	and withhold
you withhold federal income tax for an employee or are otherwise required to withhold Illinois Income Tax,	Form IL-W-4	based on the number of allowances claimed.
you enter into a voluntary withholding agreement with your employee,	Form IL-W-4	based on the number of allowances claimed.
you pay an Illinois resident for personal services, and the income is taxable under Section 1405.2 of the Illinois Income Tax Act,	Form IL-W-5	zero.
you pay an Illinois resident prizes or awards from a contest entirely in Illinois and the income earned is taxable under Section 1405.3 of the Illinois Income Tax Act,	Form IL-W-5	zero.
your employee is a resident of Iowa, Kentucky, Michigan, or Wisconsin,	Form IL-W-5-NR	zero.
you pay lottery winnings over \$1,000 but less than \$5,000 to an Illinois resident or nonresident,	Form IL-5754	the full rate of tax (no exemptions).
you pay lottery winnings over \$5,000 to an Illinois resident,	Form IL-5754 and Form IL-W-4-G exemptions).	based on the number of exemptions claimed on Form IL-W-4-G. If the winner does not give you Form IL-W-4-G, withhold the full rate of tax (no
you pay lottery winnings over \$5,000 to a nonresident,	Form IL-5754	the full rate of tax (no exemptions).
you pay gambling winnings over \$1,000 but less than \$5,000 to an Illinois resident,	Form IL-5754	the full rate of tax (no exemptions).
you pay gambling winnings over \$5,000 to an Illinois resident,	Form IL-5754 and Form IL-W-4-G	based on the number of exemptions claimed on Form IL-W-4-G. If you are not given Form IL-W-4-G, withhold the full rate of tax.
you pay gambling winnings over \$1,000 to a nonresident	Form IL-5754	zero.
<b>Note</b> You must keep a copy of these forms in your records. By February 1 of each year, you must give your employee three copies of federal Form W-2, Wage and Tax Statement. If you withheld from gambling winnings, you must give each recipient two copies of federal Form W-2G.		

## Office locations



### For information or forms

Visit our web site at [tax.illinois.gov](http://tax.illinois.gov).

Call us at **1 800 732-8866** or **217 782-3336**.

Call our TDD (telecommunications device for the deaf) at **1 800 544-5304**.

Write us at Illinois Department of Revenue, P.O. Box 19044, Springfield, IL 62794-9044.

Call our 24-hour Forms Order Line at **1 800 356-6302**.